

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID G. BENNER,

Plaintiff,

CIVIL CASE NO. 07-11606

v.

RICHARD CARRILL, et al.,

HONORABLE PAUL V. GADOLA
U.S. DISTRICT COURT

Defendants.

**ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND ACCEPTING THE
REPORT AND RECOMMENDATION**

Before the Court are Defendants' motion for summary judgment and the Report and Recommendation ("R&R") of United States Magistrate Judge R. Steven Whalen. In his Report and Recommendation, the Magistrate Judge recommended that the Court grant Defendants' motion for summary judgment and dismiss all claims against Defendants with prejudice. Plaintiff subsequently filed objections to the Report and Recommendation. For the reasons below, the Court overrules Plaintiff's objections and accepts the Report and Recommendation as the opinion of this Court.

I. Legal Standard

The Court's standard of review for a Magistrate Judge's Report and Recommendation depends upon whether a party files objections. If a party does not object to the Report and Recommendation, the Court does not need to conduct a review by any standard. *See Lardie v. Birkett*, 221 F. Supp. 2d 806, 807 (E.D. Mich. 2002) (Gadola, J.). If a party does object to portions of the Report and Recommendation, the Court reviews those portions de novo. *Lardie*, 221 F. Supp. 2d at 807. The Federal Rules of Civil Procedure dictate this standard of review in Rule 72(b), which

states, in relevant part:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

Fed. R. Civ. P. 72(b)(3). Here, because Plaintiff filed objections, this Court reviews de novo those portions to which an objection has been made. *See Lardie*, 221 F. Supp. 2d. at 807.

De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge; the Court may not act solely on the basis of a Magistrate Judge's Report and Recommendation. *See* 12 Wright, Miller & Marcus, Federal Practice and Procedure: Civil 2d § 3070.2 (1997); *see also Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court may supplement the record by entertaining additional evidence, but is not required to do so. 12 Wright, Federal Practice § 3070.2. After reviewing the evidence, the Court is free to accept, reject, or modify the findings or recommendations of the Magistrate Judge. *See Lardie*, 221 F. Supp. 2d at 807. If the Court accepts a Report and Recommendation, the Court is not required to state with specificity what it reviewed; it is sufficient for the Court to state that it engaged in a de novo review of the record and adopts the Report and Recommendation. *See id.*; 12 Wright, Federal Practice § 3070.2.

II. Analysis

Plaintiff is an inmate with the Michigan Department of Corrections. Plaintiff first filed suit alleging violations of his rights as protected by the United States Constitution, the Americans with Disabilities Act ("ADA"), the Rehabilitation Act ("RA"), and other statutes. Plaintiff argues that he was deprived of a fair Parole Board hearing, failed to receive adequate medical therapy, and

suffered mental anguish as a result of Defendants' actions.

In his Report and Recommendation, the Magistrate Judge concluded that Plaintiff's case should be dismissed. After reviewing Plaintiff's objections and the Report and Recommendation, the Court finds that the conclusions of the Magistrate Judge are correct and his reasoning is sound. In particular, the Court finds that Plaintiff's ADA and RA claims fail because his alleged sexual behavior disorder is not a disability under the relevant statutes. Also, as the Magistrate Judge correctly concluded, Plaintiff does not have a claim against Defendant Carrill because a possible denial of parole and emotional distress are not injuries for which Plaintiff can recover in federal court. Moreover, Plaintiff does not have a claim against Defendant Patten based on the rule in *Heck v. Humphrey*, 512 U.S. 477 (1994) and based on Defendant Patten's immunity. Finally, Plaintiff's claims for monetary damages against Defendants in their official capacities are barred due to immunity. In summary, the Court finds that Petitioner's objections are without merit and that the Report and Recommendation is an accurate statement of the legal issues in this case. Accordingly, for the reasons set out by the Magistrate Judge in his Report and Recommendation, all claims against Defendants should be dismissed.

III. Conclusion

Accordingly, after having reviewed the Magistrate Judge's Report and Recommendation, Plaintiff's objections, and the applicable portions of the record, **IT IS HEREBY ORDERED** that Plaintiff's objections [docket entry #30] to the Report and Recommendation are **OVERRULED**.

IT IS FURTHER ORDERED that the Report and Recommendation [docket entry #27] is **ACCEPTED and ADOPTED** as the opinion of this Court.

Consequently, **IT IS FURTHER ORDERED** that Defendants' motion for summary judgment [docket entry #13] is **GRANTED** and this case is **DISMISSED WITH PREJUDICE**.

SO ORDERED.

Dated: July 2, 2008

s/Paul V. Gadola
HONORABLE PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that on July 2, 2008, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Julia R. Bell, and I
hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: David G. Benner.

s/Ruth A. Brissaud
Ruth A. Brissaud, Case Manager
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